Filed 12/14/09 In re T.M. CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re T. M., a Person Coming Under the Juvenile Court Law.	B211213 (Los Angeles County Super. Ct. No. CK67171)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. C. M., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County. Stephen Marpet, Commissioner. Affirmed.

Marissa Coffey, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the Los Angeles County Counsel, James M. Owens, Assistant County Counsel, and Jacklyn K. Louie, Senior Deputy County Counsel, for Plaintiff and Respondent.

C. M. is the mother of T. M. (C. M. is referred to as "mother.") She appeals from juvenile court orders that terminated her reunification services, terminated jurisdiction over her son T. M., who was born in May 2003, and granted physical custody of T. M. to his presumed father, D.S., who lives in Alabama.[1] Mother contends that (1) the court failed to make findings necessary under Welfare and Institutions Code sections 366 and 366.22[2]; (2) substantial evidence does not support the termination of reunification services and jurisdiction; and (3) the Los Angeles County Department of Children and Family Services (DCFS) did not provide Mother reasonable reunification services.[3]

This is Mother's third appeal in this case. The other two concerned dispositional orders for T. M. as well as his brother, as to whom jurisdiction was earlier terminated, and the order determining D. S.'s presumed parenthood. On mother's motion, we have augmented the record to include the records in the prior appeals.

We affirm the orders under review.

FACTS[4]

Mother is the mother of both T. M. and an older son, D. M., who was born in October 2001. D. M. is the biological child of D. S., but T. M. is not; his biological father's name is unknown to Mother. Both minors suffer from a seizure disorder requiring medication. In addition, T. M. has a speech delay, while D. M. has cerebral palsy.

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1 Mother filed her notice of appeal shortly before formal rendition of certain of these orders. Under California Rules of Court, rule 8.400(g)(1), we treat the notice of appeal as filed after their rendition.

2 Undesignated section references are to the Welfare and Institutions Code.

3 D. S. is not a party to this appeal.

4 With respect to events and proceedings that occurred up to and including February 7, 2007, the following statement of facts draws heavily on the facts that were presented in our most recent opinion in this case, *In re T. M.* (Mar. 9, 2009, B206227) [nonpub. opn.].

In February 2007, T. M. and his brother were discovered alone in a Long Beach motel room. Apparently, the Mother had just arrived from Alabama and left her children alone in the room for several hours. D. M. was confined in a high chair, T. M. was crawling around and putting inedible objects into his mouth. DCFS took custody of the children.

When Mother returned to the motel, she was arrested for child endangerment. She explained that she had gone to get the children something to eat and didn't know what she'd been thinking. Mother was apologetic; she wanted her children back. She identified D. S. as their father.

T. M. and D. M. were placed in foster care, and the juvenile court ordered them detained. DCFS was ordered to provide Mother reunification services. DCFS's jurisdiction/disposition report of April 13, 2007, recited that based on a DNA test, D. S. understood that he was not T. M.'s natural father, but stated he still held himself out as such.

DCFS recommended that D. M. be released to D. S. and that proceedings to place T. M. with him be initiated under the Interstate Compact for Placement of Children (Fam. Code, § 7900 et seq.; ICPC). On April 13, 2007, the court assumed jurisdiction over the minors and ordered expedited proceedings pursuant to the ICPC for both as well as continued reunification services for Mother.

An interim review report stated that Mother had recently married W. B.[5] The report expressed concern, because Husband had been with Mother after she left the children at the motel, and he had numerous arrests and several convictions in Alabama for theft-related offenses. DCFS recommended termination of jurisdiction over D. M., with 1) his release to D. S. and 2) placement of T. M with D. S. under the Interstate Compact for Placement of Children, noting that D. S. considered T. M. his son and wished to care for him.

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5 W. B. will be referred to as "Husband."

On April 26, 2007, the court ordered that both children be sent to D. S., D. M. to the home of his father and T. M. on an "extended visit." Mother was granted monitored contact with the children in Alabama.

DCFS next reported that respondent had picked up the minors on May 10, 2007, and returned with them to Alabama. DCFS again recommended termination of jurisdiction for D. M., and completion of T. M.'s ICPC. At the June 13, 2007 disposition hearing, the court did terminate jurisdiction over D. M., and ordered that D. S. have sole legal and physical custody of him, with Mother to have monitored visitation. The court extended T. M.'s visit with D. S. until completion of the ICPC process. On July 12, 2007, the court issued a final judgment and family law order as to D. M. (§§ 302, subd. (d), 362.4.) Mother received monitored visits with T. M., and the court ordered Mother to attend a parenting course and individual counseling.

Mother then appealed, contending that the court had erred in removing the children from her custody, in terminating jurisdiction over D. M., and in sending T. M. on an extended visit to Alabama without compliance with or completion of ICPC procedures.

DCFS reported in August, 2007, that according to the Alabama social worker who was evaluating the home of D. S. and his mother for placement, the children were doing very well with D. S., who had enrolled them in school. DCFS characterized D. S. as providing a safe, stable home for T. M.

At a progress hearing regarding the ICPC process on September 11, 2007, Mother informed the court that she had enrolled in the ordered reunification services and was seeing an individual counselor. The matter was continued to October 12, at which time T. M.'s visit with D. S. was extended. Mother reported that she had completed a parenting class.

In a report prepared for the six-month review hearing under section 366.21, subdivision (e) on November 5, 2007, DCFS reported that T. M. had been enrolled in a pre-kindergarten special education class. He had not had a seizure since arriving in

Alabama, and his medication had been reduced; however, the report indicated that he might have autism. D. S. was providing for all of T. M.'s needs and expressed a willingness to provide a permanent home should reunification efforts not succeed. Meanwhile, Mother was employed in Long Beach and residing with friends. She had not had any visits with T. M., but spoke to him regularly on the phone. DCFS opined that Mother's present residence, with friends, was not suitable for return of T. M. to her.

Mother objected that she was prepared to resume custody of T. M. in a suitable home, and the court set a contest. At the request of T. M.'s and DCFS's attorneys, the court directed D. S.'s attorney to file a motion to determine D. S.'s status as T. M.'s presumed father.

At the continued hearing, Mother agreed that she did not yet have a suitable residence, as the homeowner with whom she lived would not allow children. Mother and Husband were saving to get their own place. The court found Mother to be in compliance with the case plan, continued her reunification services, and directed DCFS to assist her in obtaining a suitable residence. Such assistance was thereafter provided by a family preservation organization.

On January 8, 2008, D. S. filed his motion for presumed father status, based on the case file and D. S.'s supporting declaration and memorandum. In his declaration, D. S. stated he had originally believed that T. M. was his biological son, and during Mother's pregnancy he had openly held himself out as T. M.'s father and provided support to Mother for both T. M. and his biological child D. M. After learning that T. M. was not his biological child, D. S. still treated him as his natural child, "as has my entire family treated T[. M.] as their natural family member." T. M. now was bonded with D. S., as his father, and D. S. and his family were willing and able to support and care for T. M.

In her opposing papers, Mother declared that before the detention, D. S. "never held himself out as the father of T[. M.], nor had he received T[. M.] into his home prior to this court's intervention." Mother stated that she had raised T. M. before his detention

without help from D. S., who had not provided child support, financial or otherwise, for T. M.

Before the February 7, 2008 progress hearing, DCFS reported that Mother and Husband were presently unemployed and that Mother had not provided verification of participation in individual counseling. Mother and Husband still resided with an individual who would not allow T. M. to live there if he were returned. The family preservation organization had explained to Mother and Husband that they would have to have a source of income in order to receive auxiliary funding for new housing and be able to pay the rent. T. M. continued to do "extremely well" with D. S., and the ICPC process was nearing approval. DCFS opined that Mother "has continued to show a pattern of instability that poses a current risk for [T. M.]," but recommended that reunification services continue.

At the hearing, Mother testified in opposition to D. S.'s motion.[6] During argument, T. M.'s counsel joined in the claim of presumed fatherhood. The court ruled for D. S., noting the unanimous testimony that D. S. had always held himself out as T. M.'s father, until September 2006, and that D. S. had also taken T. M. into his home since the 2007 disposition.

Ultimately, on March 9, 2009, we affirmed the order determining D. S.'s presumed fatherhood. (*In re T. M., supra,* B206227 [nonpub. opn.].)

For the March 11, 2008, 12-month review hearing (§ 366.21, subd. (f)), DCFS reported that D. S. had enrolled T. M. in pre-kindergarten special education classes at the same school as his brother D. M. All of T. M.'s needs were being met. Since staying with D. S., T. M. had not had any seizures. He was taking Depakote for his seizure disorder, and D. S. said that T. M.'s pediatric neurologist had stated that T. M. would likely grow out of the condition.

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[6] D. S. was not present, but his counsel requested an opportunity for him to respond telephonically, or at a later hearing. The court reserved ruling.

Mother had not visited T. M., but she spoke with him frequently on the phone. Mother continued to seek housing for T. M. She also continued to participate in the family preservation program. With regard to eligibility for auxiliary funds to acquire an apartment, neither Mother nor Husband was presently employed, and their counselor stressed to them the importance of employment. With regard to Mother's requirements, she had taken 36 of the 52 required parenting classes and was reported to be "on track," with a good attitude. Although Mother had stated she was receiving individual counseling at the same organization, she had not yet provided a report to DCFS confirming that. DCFS concluded that, primarily because of Mother's failure to secure an appropriate home for T. M., reunification would be inappropriate and Mother's reunification services of 12 months should be terminated. DCFS opined that Mother's situation presented a high risk for abuse and recommended the court set a hearing under section 366.26.

At the 12-month hearing, the court found Mother to be in partial compliance with the case plan, after accepting her evidence of participation in individual counseling. The court rejected DCFS's request for termination of services and extended the matter for six months, to September, 2008, with a progress hearing to be held on June 10. In light of Mother's housing situation, the court rejected as speculative her request to contest the issue of T. M.'s return to her. Because of the recent presumed parenthood finding, the court terminated its previous suitable placement order and ordered T. M. placed with the home of D. S. under DCFS supervision. The court also ordered provision of appropriate family maintenance services to D. S.

Shortly before the June 10, 2008, progress hearing, DCFS reported that Mother had completed her parenting and child abuse classes on June 2. However, despite looking for work with assistance from the family planning program, Mother still had not achieved her primary goal of finding a job. Mother's housing situation remained the same, and her lack of income prevented her from receiving financial aid for housing from the family planning program. Similarly, "If [DCFS]were to assist [Mother] with move-in

costs or several months' rent, [Mother] would not be able to pay for rent afterwards since she does not have a job." T. M. was now attending summer school in Alabama and doing well. DCFS concluded that if, at the section 366.22 hearing set for September 3, 2008, Mother could not show "she can provide safety and stability for the child," it would recommend that jurisdiction be terminated and that T. M. remain with D. S. in Alabama.

The court continued the matter to September 3, after stating that although Mother appeared to have complied with the case plan, she did not have adequate housing, "and that appears to be what is stalling things."

On May 21, 2008, this court decided Mother's appeal from the disposition orders. (*In re Dimitri M.* (May 21, 2008, B201129) [nonpub. opn.].) We afirmed the removal of T. M. and D. M. from Mother and the termination of jurisdiction over D. M. However, we held that the juvenile court had violated the ICPC by effectively placing T. M. with D. S. without receiving notice from Alabama that the placement would be in T. M.'s interests. (See Fam. Code, § 7901, art. 3, subds. (a), (d).) We also noted that the placement interfered with Mother's efforts to reunify with T. M., insofar as visitation was concerned. However, we expressly did not require that T. M. be presently returned to California or removed from D. S.'s care.

On July 31, 2008, the court convened to act on the remittitur. Noting that D. S. now was T. M.'s presumed father, who therefore did not require an ICPC, and that he was taking good care of T. M., the court vacated the order for an ICPC and entered a new disposition order to the effect that T. M. be placed at his father's home. The court again continued the matter to September 3, 2008 for an 18-month review hearing.

DCFS's report for the review hearing stated that T. M. was attending kindergarten and reportedly liking it and that D. S. continued to meet all of his needs. DCFS reported that Mother continued to communicate with T. M. by telephone but there had been no visitation. Mother and Husband had not changed their residence, but were still looking for a new one. The family preservation center had closed Mother's case on June 27, 2008, because, despite the center's assistance and their own continued efforts, Mother

and Husband had been unable to find jobs and T. M. had not been returned to Mother's care.

The report reiterated that Mother had completed her parenting classes with an excellent attitude, according to the institution. She also was in full compliance with her individual counseling requirements and was "doing well with her program." Nevertheless, DCFS repeated the social worker's perception of a "high risk of abuse if [T. M.] were returned home to mother at this time." Simply put, after 18 months of reunification services, Mother had not shown she could provide a safe and stable environment for T. M. This, along with the lack of visitation and inability to maintain employment, caused DCFS to recommend that Mother's family reunification services be terminated "and that the child remain in Alabama with . . . [D. S.]" DCFS also recommended termination of jurisdiction.

Mother requested a contested hearing, and the court continued the September 3, 2008 hearing to September 25, 2008. On that date, the court stated it had read and considered DCFS's reports for September 3, June 10, and March 11, 2008, and the tentative disposition was to terminate jurisdiction. DCFS's attorney concurred. She acknowledged that while Mother had complied with the court's orders, " . . . there has been some instability . . . throughout the life of this case on behalf of the mother." DCFS urged that the court order joint legal custody of T. M., with physical custody to father and monitored visitation for mother. DCFS also recommended that jurisdiction for any change of custody or visitation be vested in Alabama, where T. M. and his father were living.

T. M.'s attorney concurred with DCFS, except to suggest that unmonitored visits would be appropriate. She argued that "it would be detrimental to have [T. M.] leave his current home in Alabama, which is very stable and meeting his special needs, and have him come back to Los Angeles where there is no stable housing for him. None of those services have been set up."

Mother urged that DCFS's reports reflected that "other than mother's housing and lack of visitation, there is no risk to this child being with mother." Counsel cited *In re G.S.R.* (2008) 159 Cal.App.4th 1202, which held that poverty resulting in inability to provide suitable housing is not by itself a legitimate basis for terminating parental rights. Counsel urged that the same should be true with regard to reunification services. Moreover, Mother's failure to visit was attributable to the court's orders removing T. M. to Alabama.

The court observed that D. S. had taken good care of T. M., and "[a]t this point, . . . the concern of the court is the safety of these children. Mother, at this point, has complied with the case plan, but I'm still looking for risk issues." The court stated it would make a family law order for joint legal custody and primary physical custody with D. S., as well as unmonitored visits for Mother. The court noted that mother could seek to modify the order in Alabama. The court then ordered termination of jurisdiction and reunification services, but stayed the jurisdictional order pending preparation of the family law order.

On October 8, 2008, the court entered that final order, providing for termination of jurisdiction, physical custody and primary residence to D. S., and stating that "Alabama will have jurisdiction of any change of custody order as minor and father reside in Alabama." Mother objected to the order (as she had to the orders of September 25), urging instead joint physical custody and provision to modify the order in California. This appeal followed.

DISCUSSION

Mother challenges the order terminating jurisdiction and granting physical custody of T. M. to D. S., on two bases. First, she contends that the order was procedurally defective and must be reversed for reconsideration, because the juvenile court failed to make certain findings required by section 366.22, subdivision (a) –primarily a finding whether return of T. M. to Mother would "create a substantial risk of detriment to [his] safety, protection or physical or emotional well-being . . . ." (*Ibid.*) Second, Mother

argues that substantial evidence did not support either an adverse finding or the decision to terminate jurisdiction, and therefore T. M.'s physical custody must be returned to Mother. These contentions are unavailing, because T. M. had already been placed with a parent at the time of the section 366.22 hearing, and therefore the controlling question was T. M.'s best interests.

Section 361.2, subdivision (a) provides presumptively for placement of a child with a parent with whom the child was not living when the events giving rise to juvenile court jurisdiction occurred (and who desires to assume custody). Upon such a placement, the court under subdivision (b) of section 361.2 may (1) directly terminate jurisdiction, ordering custody to the parent and visitation by the other parent (subd. (b)(1)); (2) await a home visit within three months (subd. (b)(2)); or (3) order custody under court supervision, in which case services may be provided to either or both of the parents. If both parents receive services, ultimate custody is to be determined at review hearings. (Subd. (b)(3).

In the present case, T. M. was ordered placed with his presumed father, at the 12-month permanency review hearing under section 366.21, subdivision (f), which took place shortly after the determination of presumed fatherhood. That order was renewed when the court on July 31, 2008, substituted it for the original disposition order, which had been reversed. This placement with an originally noncustodial parent necessarily invoked and brought the matter under section 361.2.[7]

Mother argues that section 361.2 did not and could not so apply, because the statute may attach no later than the original disposition hearing. We have previously decided otherwise. In *In re Janee W.*, *supra*, 140 Cal.App.4th 1444, two children had

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[7] Although the record occasionally refers to section 364 as a partial basis for the review hearings, that section, which applies when a child "is not removed from the physical custody of his or her parent or guardian," did not apply to this case, in which T. M. was ordered removed from Mother's custody. (*In re Janee W.* (2006) 140 Cal.App.4th 1444, 1451-1452.)

been placed with their noncustodial father at the six-month review hearing. In deciding that section 361.2 thereafter applied, we stated, "Even though section 361.2, by its terms, applies when the court first takes jurisdiction of a child, its procedures can be invoked at the six-month and 12-month review hearings, as occurred here." (*In re Janee W.*, at p. 1451.) In so ruling, we cited California Rules of Court, former rule 1460(h), (presently rule 5.710(h)), which provides for procedures that may be pursued at the six-month hearing "If the court has previously placed *or at this hearing places* the child with a noncustodial parent . . . ." (Emphasis added.) These procedures involve continuing supervision, ordering custody to the noncustodial parent, or doing the latter and terminating jurisdiction with a family law order (Judicial Council form JV-200, used here). Those options parallel those provided in section 361.2, subdivision (b). The same authority also appears in rules 5.715(c)(2), with regard to the 12-month review hearing and 5.720(c)(2), with regard to the 18-month hearing. These rules thus contemplate and validate the application of section 361.2 at those hearings, with respect to both placement and termination of jurisdiction.

Mother mistakenly claims that application of the statute in this case would be "retroactive." Section 361.2 began to operate in this case shortly after D. S. was declared to be T. M.'s presumed father. The statute's operation did not undo or alter any previous proceedings, nor did section 361.2 displace or supplant section 366.22. That the case was governed by section 361.2 did, however, alter the nature of the court's requisite inquiry at the 18-month hearing in a way that overcomes Mother's contentions.

In this regard, *Nicholas H.* (2003) 112 Cal.App.4th 251, a case very similar to the present one, directly refutes Mother's contentions about the consequences of a detriment finding under section 366.22, subdivision (a), and the sufficiency of evidence to support termination of jurisdiction. In *Nicholas H.*, a child was removed from his mother's custody and placed, at disposition, with his presumed father. As here, mother was given family reunification services, and father received family maintenance services. At a combined 12- and 18-month review hearing, the court terminated mother's reunification

services and found that it would be in the child's best interest "to remain with [father] because of the stability and family relationships he experienced in that placement." (*Nicholas H.,* at p. 258.) The court dismissed the case, giving joint legal custody to both parents and sole physical custody to father, with reasonable visitation to mother. Apparently the court did not make an express finding of detriment under section 366.22, subdivision (a), but it did find that the mother "had made progress but was not yet ready to have Nicholas returned to her care." (*Nicholas H.,* at p. 258.) On appeal, mother contended – as Mother does here – that section 366.22, subdivision (a), had required the court to return the child to her unless it made a finding that doing so would create a substantial risk of detriment to the child's safety, protection, or well-being. (*Nicholas H.,* at p. 262.)

The Court of Appeal initially ruled that the placement had been made pursuant to section 361.2. It also ruled, under what is now subdivision (b)(3) of section 361.2, that review hearings under section 366 et seq. had been appropriate, even though those sections generally apply to children placed in foster care instead of with a parent. (*Nicholas H., supra,* 112 Cal.App.4th at pp. 264-265; see § 366, subd. (a)(1) ["[t]he status of every dependent child in foster care shall be reviewed . . . no less frequently than once every six months . . ."]; 366.21, subd. (f).) But, the court explained, neither section 361.2 nor practical realities required strict adherence to all provisions normally applicable to children in foster care when reviewing the status of a child who is placed with a parent. (*Nicholas H.,* at pp. 264-265.)

In particular, the court continued, the "risk of detriment" analysis of sections 366.21, subdivision (f) and 366.22, subdivision (a), "expressly pertains to a review hearing in the case of a dependent child *in foster care.*" (*Nicholas H., supra,* 112 Cal.App.4th at p. 266, emphasis in original.) However, when a child has been placed with a previously noncustodial parent and both parents have been provided services, section 361.2, subdivision (b)(3) provides that review hearings under section 366 et seq. must be held in order to determine which parent will receive ultimate custody. "[B]y

extending services to both parents, the court has necessarily identified two distinct potential parental homes for this child, the home of removal and the home of the previously noncustodial parent. [¶] Thus, in this context, a finding that a dependent child can safely be returned to the home of the parent from whose custody the child was originally removed simply does not have the dispositive effect that finding has when the dependent child has been living in foster care. Such a finding does establish that the home of removal is now a safe home. But it does not address which parent, if either, should have custody of the child." (*Nicholas H.*, at pp. 266-267.)

In making that determination, the court opined, the juvenile court may consider both 1) the risk of detriment in returning the child to the custody of the parent from whom the child had been removed and, 2) the need, if any, for continuing supervision, a factor the court is charged with determining under section 366.21, subdivision (e), and, for the 12- and 18-month hearings, rules 5.715(c)(2)(a) and 5.720(c)(2)(a). (*Nicholas H., supra,* 112 Cal.App.4th at pp. 267, 268.)

The *Nicholas H.* court assumed that the juvenile court had "implicitly found that Nicholas could be returned to [mother] without creating a substantial risk of detriment to his health or well-being." (§ 366.22, subd. (a)). (*Nicholas H., supra,* 112 Cal.App.4th at p. 268.) That finding, however did not dictate the outcome. Rather, the dispositive inquiry in properly determining custody was the best interests of the child (*ibid.*), and the lower court had applied this standard when it decided that granting the father sole physical custody "was in the best interests of the child because of the stability and family relationships [he] experienced in that placement." (*Ibid.*)

Based on the analysis in *Nicholas H., supra,* 112 Cal.App.4th 251, we reach the following resolution of Mother's principal contentions: Although the juvenile court here did not make an express finding on the question of detriment, that does not require either remand or extensive analysis of whether substantial evidence would support a finding adverse to Mother. Rather, assuming for purposes of decision that Mother should have received a favorable finding, such a finding would not have controlled T. M.'s future

custody. Determining custody depended ultimately on whether it was in T. M.'s best interests to remain with his father (and brother), or be restored to the custody of his mother despite the uncertain situation she occupied. The failure to make an express finding regarding detriment does not require reversal.

Mother contends that the court failed to make other findings under section 366, subdivision (a). Mother grounds the alleged need for such findings in subdivision (a) of section 366.22, which provides that in making its assessment regarding detriment, the court "shall make appropriate findings pursuant to subdivision (a) of section 366." However, that subdivision does not call for findings. Rather it lists five factors that the court must determine in hearings on the status of children who are in *foster care*. (See also § 366, subd. (a)(E)(2).) Even assuming that the statute applies in this case, the court below did determine most of those factors, including the appropriateness of the present placement, the nature of sibling relationships, and the extent of progress made toward alleviating the causes that led to foster placement (§ 366, subds. (a)(1)(A), (D), (E)) – the latter being another indication that these determinations do not fit with a case under section 361.2. Finally, any perceived deficiency in compliance becomes inconsequential if one assumes, as we do, a finding favorable to Mother on the question of detriment. For all of these reasons, Mother's claim of reversible error respecting findings under section 366 must fail.

Mother's remaining contentions are that substantial evidence does not support (1) the decision to terminate jurisdiction, and grant D. S. sole physical custody of T. M., and (2) a determination that Mother was provided reasonable services. Both contentions lack merit.

On the question of termination of jurisdiction and award of physical custody to D. S., Mother asserts that her record of compliance with the court's reunification requirements and the family preservation program, together with her efforts to obtain employment and a suitable residence for T. M., did not support a determination that return of T. M. to her would be detrimental and therefore did not justify depriving her of

physical custody. But even assuming that Mother merited a favorable finding on the detriment question and her performance was excellent, that does not mandate her assuming custody. Nor does it necessarily render custody by Mother more in T. M.'s best interests than for him to remain with his father, who has been taking excellent care of him and providing a suitable home.[8] The court below addressed the question of best interests and -- with full awareness of Mother's positive record-- concluded that continued custody by D. S. would better serve T. M.'s interests in safety and care. On this record, substantial evidence supports the court's finding that returning T. M. to Mother's custody is not in the child's best interest. (*In re Yvonne W*. (2008) 165 Cal.App.4th 1394, 1400-140.) Assuming Mother is claiming that the trial court abused its discretion, we make no such finding based on this record.

Mother also claims that it was an abuse of discretion for the juvenile court not to order joint physical custody of T. M., given Mother's performance and the distance between her residence and D. S.'s. In view of the court's overall determination of T. M.'s best interests and its award of visitation to Mother, we do not perceive an abuse of discretion in vesting D. S. with physical custody, subject to later modification if appropriate.

Mother contends finally that DCFS did not provide her reasonable services in the areas of facilitating visitation and providing assistance to obtain housing that would permit T. M.'s return. This contention misses the mark. In *In re Janee W., supra,* 140 Cal.App.4th at page 1453, we held that reasonable reunification services were not required in a case "when a child is removed from the custody of one parent and placed with another under section 361.2." Moreover, section 366.22, subdivision (a)'s provision that the court shall determine whether reasonable services have been provided functions as a hedge against improvident setting of a section 366.26 hearing, which is not part of

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[8] *In re Yvonne W., supra,* presents a different situation from the present case. The case involved a choice between keeping the child in a foster home or returning the child to a mother who was living in a shelter. (*Id*. at p. 1398.)

the process under section 361.2. Here Mother received the maximum 18 months of services contemplated under section 361.5, but a finding that those services were "adequate" is not a prerequisite to termination of jurisdiction. (See *In re Janee W.*, at p. 1455.)

Moreover, we are satisfied that the services Mother received were reasonable. Mother argues that DCFS should have paid for Mother or T. M. to travel cross-country for visitation. Assuming funding existed for this purpose, the record does not reflect any request for such reimbursement by Mother to DCFS or the court. Nor does the record disclose dissatisfaction by Mother with her regular telephone contact with T. M. As for services to find suitable housing, Mother contests the unwillingness of DCFS and the family preservation center to grant her move-in funds until she obtained income (which would prevent her prompt eviction for nonpayment of rent). This restriction, which was part of the extensive housing services Mother did receive, was sensible and reasonable.

DISPOSITION

The orders under review are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MOHR, J.*

We concur:

RUBIN, Acting P. J.

FLIER, J.

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.